

NTSB Order No. EA-5119

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 14th day of October, 2004

Docket SE-16941

7664

alleged violations of sections 91.123(a), 91.13(a) and 119.5(1) of the Federal Aviation Regulations (FARs), which are contained in Title 14 of the *Code of Federal Regulations*.³ Specifically, the order alleged that:

1. You are now and were at all times material hereto, the holder of Airline Transport Pilot Certificate No. 573651533.
2. On or about March 14, 2001, you acted as second-in-command of civil aircraft N955U, a McDonnell-Douglas model MD-80, being operated as Trans World Airlines (TWA) revenue flight number 641 from St. Louis, MO. to Hayden/Yampa Valley Airport, Hayden, Colorado. At all times material hereto, you were piloting and manipulating the flight controls of N955U.
3. Incident to the above-described flight, N955U was cleared by air traffic for the ILS DME Runway 10 [approach] at Hayden Airport, Hayden, Colorado.
4. N955U did not execute the ILS DME Runway 10 [approach] at Hayden Airport, and instead landed on runway 07 at the Craig-Moffat Airport in Craig, Colorado.
5. During taxi at Craig-Moffat Airport, the right main landing gear of N955U departed the paved surface and the aircraft became stuck in the mud.
6. Craig-Moffat Airport is a General Aviation Airport located approximately 13 miles to the West of the

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Safety Reporting Program.

³ FAR section 91.123(a) prohibits deviation from an ATC clearance unless an amended clearance is obtained, an emergency exists, or the deviation is in response to a traffic alert and collision avoidance system resolution advisory. FAR section 91.13(a) prohibits operation of an aircraft in a careless or reckless manner so as to endanger the life or property of another. FAR section 119.5(1) prohibits operation of an aircraft in violation of an air carrier operating certificate, operating certificate, or appropriate operations specifications. An additional alleged violation (of FAR section 121.590(a)) was subsequently withdrawn by the Administrator.

Hayden/Yampa Airport, and does not have an ILS.⁴

In his answer to the Administrator's complaint, respondent admitted all of these allegations but asserted several affirmative defenses, including: (1) laches;⁵ (2) that he reasonably relied on the captain;⁶ and (3) that TWA failed to provide training relating to operating into Hayden, which is designated as a special airport requiring "special airport qualifications."⁷

On October 23, 2003, the Administrator filed a motion for judgment on the pleadings premised on respondent's factual admissions, and asserting that respondent was not entitled to rely on any of his affirmative defenses. The Administrator noted that as an airline transport pilot, respondent was held to the highest standard of care and that part of his duties as the

⁴ The order included another allegation (that Craig-Moffat Airport was not listed in the TWA operations specifications as an authorized airport and was not certified pursuant to 14 CFR Part 139), which the Administrator subsequently withdrew.

⁵ Laches is defined in Black's Law Dictionary as, "neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in court of equity."

⁶ The captain was also charged as a result of this incident, but the captain withdrew his appeal from the Administrator's order.

⁷ FAR section 121.445 states that the Administrator may require special airport qualifications for operations into certain airports (due to items such as surrounding terrain, obstructions, or complex approach procedures). The regulation also prohibits an air carrier from using a person, or a person from serving, as pilot in command to or from such an airport unless in the preceding 12 months the pilot in command or second in command has made an entry to that airport, or the pilot in command has qualified by using pictorial means acceptable to the
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flying pilot are to monitor the instruments, know where he is, and land at the correct location. Respondent opposed the Administrator's motion, contending that there were still material facts in dispute beyond those admitted in the complaint (i.e., those relating to respondent's affirmative defenses), and that the Administrator was inappropriately attempting to apply a strict liability standard.

The law judge issued an order granting summary judgment in the Administrator's favor. Regarding respondent's asserted defense of laches, the law judge noted that respondent had not demonstrated actual prejudice (nor, we note, did he even allege any) resulting from the delay in the Administrator's filing of the complaint. The law judge found that respondent's asserted reliance defense could not succeed because he had an independent responsibility for safe operation of the flight and, therefore, the circumstances did not fall within the scope of the Board's recognized reliance defense, as described in Administrator v. Fay and Takacs, NTSB Order No. EA-3501 (1992) (a pilot can reasonably rely on someone else to accomplish a task that is within the other person's responsibility, if the pilot has no independent obligation or ability to ascertain the information at issue, and the pilot has no reason to question the other's performance).

On appeal, respondent takes issue with the law judge's sua sponte conversion of the Administrator's motion for judgment on

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Administrator for that airport.

the pleadings to a motion for summary judgment, arguing that respondent was not put on notice that he should defend against such a motion, and if he had known he would have proffered evidence demonstrating that there were unresolved material issues of fact. Specifically, respondent alleges his evidence would show that the captain misidentified Craig-Moffat as Hayden, and told respondent to immediately execute a visual landing there, leaving respondent no time to second-guess this decision. He also alleges that the evidence would show that the captain, not he, was taxiing the airplane after landing when it became stuck in the mud. He argues that the law judge improperly denied him a hearing on these affirmative defenses.

The Administrator filed a reply brief arguing that respondent was not prejudiced by the law judge's treatment of the motion as one for summary judgment and that summary judgment was appropriate under the circumstances. The Administrator also argued that the law judge properly evaluated and rejected respondent's affirmative defenses. We agree.⁸

The law judge's treatment of the Administrator's motion as one for summary judgment was not prejudicial to respondent. Because, as further explained below, respondent's affirmative defenses (even assuming the truth of the facts he claims would have been supported at trial) were not viable, there was no issue

⁸ The issues have been fully briefed by the parties and oral argument is not necessary. Accordingly, respondent's motion for oral argument is denied. See 49 CFR 821.48.

of material fact that would warrant a hearing.

As we noted in Fay and Takacs, cited above, the defense of reasonable reliance can only succeed when the respondent has neither the obligation nor the ability to ascertain the information at issue. As discussed below, respondent had both; therefore, his reliance defense could not succeed and a hearing on that issue would serve no purpose.

It should go without saying that an air transport pilot at the controls of a passenger-carrying flight has an obligation or duty to ensure that he lands at the correct airport. Although respondent claims that the captain (who was the non-flying pilot at the time) "usurped the pilot flying's duties to the extent that he identified [the wrong airport] and directed the pilot-flying - [respondent] to land," we find this position untenable. An airline transport pilot's duty to land at the correct airport is so fundamental it cannot be "usurped" by another.

Further, there is no credible suggestion in this case that respondent did not have the ability to ascertain the identity of the airport at which he should have landed. There are notable differences between Hayden and Craig-Moffat in terms of runway dimensions,⁹ runway headings,¹⁰ and landing guidance (e.g., the

⁹ According to published information, runway 10 at Hayden is 10,000 feet long and 150 feet wide, whereas runway 7 at Craig is only 5,606 feet long and 100 feet wide.

¹⁰ Because runways are named to correspond to their approximate compass headings, it is clear that the heading of runway 10 at Hayden (approximately 100°) and runway 7 at Craig-Moffat (approximately 70°) were approximately 30° apart.

flight was cleared for an ILS/DME approach at Hayden but there was no ILS at Craig-Moffat). Given these differences, and the geographical distance between the airports, we think it is clear that with proper care and the use of available charts and instruments, respondent could have distinguished one airport from the other. See Administrator v. Malik and Swaim, NTSB Order No. EA-5022 (2003) (airline transport pilots are held to the highest degree of care; it is their responsibility to familiarize themselves sufficiently, before and during flight, with the characteristics of the airport at which they intend to land).

Similarly, a hearing on respondent's other affirmative defenses would serve no useful purpose. Regarding his lack of training defense, in light of the high standard of care to which respondent is held, and his independent obligation to identify and land at the correct airport, we do not view the carrier's purported failure to provide required training pursuant to FAR 121.445 as a viable defense to these charges. Regarding the laches defense, as noted above, respondent did not show or assert any actual harm as a result of the Administrator's delay in filing the complaint.

Therefore, the pleadings in this case clearly establish that respondent inappropriately landed at Craig-Moffat when he was cleared to land at Hayden, in clear violation of FAR sections 91.13(a) and 91.123(a).¹¹ Because no viable affirmative defense

¹¹ The pleadings also establish that respondent taxied the plane into the mud, an apparent additional violation of 91.13(a).
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has been asserted, we affirm those violations. However, the record does not establish a violation of FAR section 119.5(1), which prohibits operation of an aircraft in violation of an air carrier operating certificate or operations specifications. Therefore, that charge is dismissed.

ACCORDINGLY IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The FAR 119.5(1) charge is dismissed; and
3. In all other respects, the law judge's decision and order is affirmed.

ENGLEMAN CONNERS, Chairman, ROSENKER, Vice Chairman, and CARMODY, HEALING, and HERSMAN, Members of the Board, concurred in the above opinion and order.

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We note that, in his appeal brief, respondent for the first time denied that he was at the controls during the taxi. This conflicts with his earlier admission in his answer to the allegation that he was manipulating the controls at all relevant times. We think it is too late to amend that pleading. See 49 CFR 821.12.